

MCI WORLD COM

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March 27, 2000

EX PARTE OR LATE FILED

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

CC Docket No. 00-4

RECEIVED

MAR 27 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

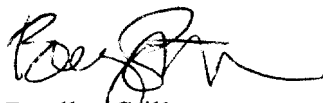
On Friday, March 24, 2000, Jonathan Sallet, Keith Seat, and I of MCI WorldCom and Jerry Epstein of Jenner and Block, met with Commissioner Harold Furchtgott-Roth and his legal advisor Helgi Walker regarding the above referenced docket.

The meeting focused on MCI WorldCom's continuing concerns regarding barriers to local competition in Texas. The attached documents were provided. During the course of the meeting, we confirmed the Company's position that the Commission should be as specific as possible in documenting its review of the competitive checklist and public interest test regardless of the ultimate disposition of the application.

Finally, we were asked about the Company's position regarding incumbent local exchange carrier's offering limited or promotional discounts to new entrants based on when the competitor enters the local market and places orders. As MCI WorldCom indicated in the context of the SBC/Ameritech merger review, the Company does not support a policy that would lead to discriminatory pricing of unbundled elements or resold services.

In accordance with section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), an original and one copy of this memorandum are being filed with your office.

Sincerely,


Bradley Stillman

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List A B C D E

cc: Commissioner Furchtgott-Roth
Helgi Walker

**List of Selected MCI WorldCom Complaints Against
SWBT Filed in Texas on Matters Relating to Section 271**

1. Complaint And Request For Dispute Resolution Of MCI Telecommunications Corp. And MCI Access Transmission Services, Inc. Against Southwestern Bell Telephone Company (PUC Docket No. 19362) (filed May 19, 1998)

“Mega-complaint” against SWBT on UNE-P OSS issues associated with MCI WorldCom’s Houston trial. On June 9, 1998 the Texas PUC abated the complaint until the completion of Docket No. 16251 (the section 271 proceeding) and stated that it would address the issues in Docket No. 16251 and what became Docket No. 20000 (the OSS test).

2. Complaint Of MCI Telecommunications Corporation And MCImetro Access Transmission Services, Inc. Against SWBT Public Utility Commission For Violation Of Commission Order In Docket Nos. 16285 And 17587 Regarding Provisioning Unbundled Dedicated Transport (PUC Docket No. 18117) (filed Oct. 16, 1997)

Complaint against SWBT for not providing unbundled dedicated transport; on March 23, 1998 the Texas PUC ruled in MCI WorldCom’s favor.

3. Complaint And Request For Expedited Ruling Of MCI Telecommunications Corporation Against Southwestern Bell Telephone Company For Violation Of Commission Order In Docket Nos. 16285 And 17587 Regarding Provisioning Directory Assistance Listings (PUC Docket No. 18387) (filed Nov. 21, 1997); and

4. Complaint Of MCI WorldCom Against SWBT Regarding Reverse Directory Assistance (PUC Docket No. 21011) (filed June 22, 1999)

Complaints against SWBT on directory listing and reverse DA issues. The PUC ruled that MCI WorldCom could receive Texas listings at TELRIC prices, but did not grant MCI WorldCom’s request to receive listings at TELRIC for other states that SWBT uses in Texas. (Arbitration award Jan. 26, 1998; final order March 2, 2000). MCI WorldCom has an appeal pending.

5. Complaint Of MCI Telecommunications Corporation, AT&T Communications Of The Southwest, Inc., The Texas Commission Association Of Long Distance Telephone Companies, LCI International Telecom Corp., And IXC Communications, Inc. Regarding The Unreasonableness And Anticompetitive Effect Of The Access Charges Of Southwestern Bell Telephone Company (PUC Docket No. 18995) (filed March 11, 1998)

Complaint against SWBT for excessive access charges. The PUC dismissed the case (June 12, 1998).

6. Complaint And Request For Interim Ruling Of MCI Against SWBT For Violation Of Commission Order In Docket Nos. 16285 And 17587 Regarding Cut-Overs Of MCI Customers (PUC Docket No. 19155) (filed April 9, 1998)

Complaint against SWBT for violating PUC orders regarding cut-overs of MCI customers. The PUC oversaw a Memorandum of Understanding (MOU) that settled the complaint, which was related to interim number portability (INP). In conjunction with the 271 proceeding, the PUC stated that SWBT had to meet INP performance measurements on a going forward basis. (June 22, 1998)

7. Complaint Of MCI , Brooks, and MFS Against SWBT Regarding Delivery Of Telephone Directories (PUC Docket No. 20224) (filed Dec. 11, 1998)

Complaint against SWBT on directory delivery. The PUC oversaw an MOU that settled the complaint. However, SWBT has taken the position that it is not bound by the terms of the MOU in the “next-generation” contract that will likely be subject to arbitration later this year.

8. Complaint Of MCI WorldCom, Inc. Against Southwestern Bell Telephone Company To Eliminate Non-Recurring Charges (PUC Docket No. 22290) (filed March 15, 2000)

Complaint against SWBT to eliminate NRCs. This is the complaint that addresses the UNE-P issues that the 5th Circuit remanded back to the PUC. The complaint is in the initial procedural stages.

**Remaining Barriers to
Residential Local Exchange
Telephone Competition in Texas**

March 24, 2000

Most Key Conditions for Local Competition Are Present in Texas

- Substantial opportunity -- third largest market in the country (after California and New York)
- Unbundled Network Element (UNE) -Platform is legally available to competitors
- Involved state commission helping to level playing field
- **MCI WorldCom hopes to enter Texas residential market soon, but viability and scope depend on progress in overcoming remaining SBC barriers**

Critical Barriers to Local Competition Remain in Texas

- SBC/Southwestern Bell's operations support systems (OSS) cannot handle commercial scale launch
 - SBC's OSS is not yet ready to handle realistic volumes of either UNE-Loop orders or UNE-Platform orders
 - SBC's OSS is not commercially ready for DSL orders
- Performance Remedy plan is far too weak to maintain adequate performance and deter backsliding if SBC gets section 271 authority (allowing in-region long distance)
- SBC's "glue" charges are unlawful and hurt competition
- SBC has not proven it can implement vitally important Change Management rules it recently agreed to

OSS Problems: SBC's Systems Must Be Improved

- SBC relies too much on manual processing of orders, resulting in delays and errors, and preventing entry at commercial volumes
- SBC unnecessarily breaks up orders into three parts without sufficient coordination, greatly increasing risk of loss of dial tone (unlike in NY)
- SBC's problems relating to service addresses increase competitors' costs and delay order processing
 - SBC's internal databases contain conflicting address data, causing competitors' orders to be rejected improperly
 - SBC systems compel excessive re-keying by competitors because of requirement to include service address on all orders and inability to get Customer Service Record in proper format
- SBC fails to properly relate multiple customer orders, preventing customers from scheduling a single installation time

OSS Problems: SBC's Manual Processes Must Be Automated

- SBC's OSS is currently not capable of electronically flowing through critical order types, including most partial migrations (switching less than all lines) and most supplemental orders
- SBC's systems may not allow competitors to report customer troubles electronically during the critical first 24-48 hours after installation (similar problem was fixed in NY prior to application; SBC implemented "fix" on March 18 that is now being test)
- SBC does not provide adequately automated processes for key updates to a customer's profile, including the customer's long-distance carrier (unlike in NY)
- SBC rejects too many orders, manually processes an excessive number of the rejects, and takes far too long to return the manually-processed rejects to competitive local carriers (CLECs)

OSS Problems: SBC's Performance Must Improve

- SBC has consistently failed to meet many critical performance standards despite handling only a limited number of orders
 - SBC's UNE-Loop problems result in excessive lost dial tone in many cutovers
 - Substantial problems with Digital Subscriber Line loops
- SBC has failed to demonstrate that it can handle a commercial environment either in real life or through stress testing
 - Commercial volumes will require SBC to handle several thousand orders/day from each of several CLECs
 - Order volumes for residential UNE-Platform service are far lower than those being processed by Bell Atlantic in NY
 - Bulk of SBC's UNE-Platform volume has been conversion of competitors' resale base, rather than new orders
- Despite low volumes, SBC does not process competitor's orders as quickly or accurately as its own

Performance Remedies: SBC's Plan Inadequate to Prevent Backsliding

- Backsliding in its performance for competitors is of great concern if SBC receives long distance authority in Texas
- Performance remedy plan is mere “slap on the wrist”
 - SBC would pay only a few thousand dollars for repeated and egregiously poor performance
 - SBC obtained loopholes in plan which makes detecting and deterring poor performance more difficult
- Maximum overall cap is irrelevant
 - SBC designed plan so it will never come close to cap
- SBC could block local competition and write off the trivial remedies paid as a cost of doing business
 - SBC paid only \$2000 to all CLECs in November, \$450 in December (and hasn't posted January figure), despite missing key measures

Performance Remedies: SBC's Plan Inadequate in Scope

- SBC does not report certain critical measures of its performance, including change management (unlike NY)
- Unreported problems leave SBC with no incentive to correct faulty service
- SBC could block local competition by simply performing poorly in unreported areas

SBC's Pricing Scheme Hinders Competition

- SBC's "glue" charges for combining elements in a UNE-Platform that are already combined are unlawful and discourage competition
 - Not cost-based
 - Harm business case for competitive entry
 - Temporary end to charge not adequate
- SBC's glue charges for "new" UNE-Platform combinations results in double recovery by SBC
 - Cost of combining included in monthly charge for elements

SBC Must Follow Change Management Procedures

- SBC's changes of its systems and interfaces with competitors can eliminate competition unless it provides adequate notice and cooperation; requirements for notice/cooperation are called "change management"
- SBC has never been tested on change management requirements for a significant change or release
 - SBC recently committed to entirely new change management rules
 - Performance standards and remedies are not in place (as in NY) to ensure that SBC adheres to required change management practices following section 271 entry

Conclusion: Remaining Barriers in Texas Undermine Local Competition

- Remaining SBC barriers prevent robust local competition
- SBC has made progress, at the insistence of the Texas Commission, but should fully resolve problems prior to section 271 authorization
- FCC, DOJ must look closely at SBC's section 271 application to ensure market irreversibly open and public interest satisfied

ADDENDUM A

Texas - New York Comparison on Selected Issues

| <u>Issue/Problem</u> | <u>Texas</u> | <u>New York</u> |
|--|---------------------|------------------------|
| - Insufficient third-party OSS test | YES | NO |
| - Unable to get Customer Service Records in "parsed" format to avoid excessive re-keying | YES | NO |
| - Required to send full service address on every order, even if simply migrating customers | YES | NO |
| - Improper rejects of competitors' orders due to Bell's internal databases containing conflicting address data | YES | NO |

ADDENDUM A (Cont'd)

Texas - New York Comparison on Selected Issues

| <u>Issue/Problem</u> | <u>Texas</u> | <u>New York</u> |
|---|---------------------|------------------------|
| - Loss of dial tone from breaking orders into three parts and failing to coordinate them | YES | NO |
| - Lack of adequate automated processes to update customer records with Bell after initial order | YES | NO |
| - Trouble-tickets may be manual for first 24-48 hours (March 18 "fix" being tested) | YES | NO |
| - Failure to properly relate multiple customer orders | YES | NO |
| - Improper "glue" charges for UNE-Platform | YES | NO |

ADDENDUM A (Cont'd)

Texas - New York Comparison on Selected Issues

| <u>Issue/Problem</u> | <u>Texas</u> | <u>New York</u> |
|--|---------------------|------------------------|
| - Bell performance remedy plan fails to include critical measures, such as change management | YES | NO |
| - Key Bell pre-ordering and ordering interfaces not available for much of the night | YES | NO |
| - Must resend orders transmitted when Bell system is unavailable | YES | NO |
| - Excessive outages when provisioning UNE-Loops | YES | YES |

ADDENDUM B

Post-Entry Problems in New York Counsel Caution

- FCC granted section 271 authorization to Bell Atlantic for New York on Dec. 21, 1999
 - New York is first state to receive section 271 authority
 - Compared to Texas, New York clearly had more robust OSS in place, more commercial experience, and more thorough testing
- Bell Atlantic is having severe problems with lost or mishandled CLEC orders in New York
 - Bell Atlantic lost or failed to send proper notices for many tens of thousands of pending MCI WorldCom local orders; problems continue
 - Other CLECs, both large and small, are suffering from same problems
 - Bell Atlantic admits fault, but has not yet demonstrated that proposed solution will resolve critical problems or fully cleared backlogs
- Both FCC and NY state commission extremely concerned and attempting to compel Bell Atlantic to resolve problems
 - Bell Atlantic must pay \$3 million to U.S. Treasury and \$10 million to competitors, and larger future payments if problems not resolved

ADDENDUM C

Section 271 Application at FCC: Process and Timing

- FCC must make decision to grant or deny section 271 applications based on statutory criteria
 - Compliance with the 14-point competitive checklist
 - Compliance with requirements for separate subsidiary and competitive presence test
 - Whether section 271 authorization is in the public interest
- FCC established schedule for comments on Texas 271
 - CLEC & state commission comments filed Jan. 31, replies on Feb. 22
 - Department of Justice evaluation filed Feb. 14, concluding that FCC should **deny** Texas 271 application primarily because of problems with DSL and hot cuts of UNE-L
 - DOJ submitted unprecedented ex parte letter to FCC on March 20 reiterating concerns with Texas application despite SBC's post-application evidence, and urging denial
- FCC has 90 days to act on application; 90th day is Sunday, April 9

Numerous SWBT Systemic Problems Result in Customer Dissatisfaction with Competition

